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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/574,856	05/19/2000	William O. Burke III	2104A	1316

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EXAMINER
WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Offic Action Summary	Application N .	Applicant(s)	
	09/574,856	BURKE ET AL.	
	Examin r	Art Unit	
	William P. Watkins III	1772	

-- The MAILING DATE of this c mmunication appears on th cover sh et with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 February 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-14,20-26 and 31* is/are pending in the application.

4a) Of the above claim(s) *10-14 and 23-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,8,9,20-22 and 31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The rejection over Rockwell Jr. et al. is withdrawn as being improper under 35 USC 103 (c) in view of applicant's assertion of common ownership at the time of the instant invention.

2. The rejection of Derr in view of Kerr et al. is with drawn in view of applicant's arguments regarding the lack of teaching of a skin completely encompassing the entire mat.

3. The terminal disclaimer filed 18 February 2003, regarding U.S. 6,340,514, is being processed.

4. Claim 6 remains rejected under the various double patenting rejections given below, but is not rejected under any art rejection, and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if proper disclaimers are filed or the double patenting rejections otherwise are traversed. The cited prior art fails to teach a projection with a substantially thicker skin thickness than the skin around the rest of the mat.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-3, 5, 8-9 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindholm (U.S. 6,014,779) in view of Dungl (U.S. 4,329,981).

Lindholm teaches a rubber mat with projections on both the top and bottom surfaces, that is used to massage feet, and has top projections that are less than 1/2 inch in diameter (col. 3, lines 25-30, col. 4, lines 50-55, Figure 3). Dungl teaches making a mat with projections used to massage feet out of a foam rubber with a continuous outer skin in order to provide cushioning for the feet being massaged and seal the mat against water intrusion (col. 4, lines 15-35). The instant invention claims the use of projections about 1/32 to 1/8 inch in diameter in a foam mat with a continuous skin. It would have been obvious to one of ordinary skill in the art to have made the mat

of Lindholm out of a foam with a skin in order to provide cushioning and protection from water because of the teachings of Dungl. Lindholm has a continuous rubber border. Variation in foam rubber composition is taken being within the ordinary skill of the art. One of ordinary skill in the art would add carpet pile if more abrasive cleaning of the feet was desired.

7. Claims 4, 20, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindholm (U.S. 6,014,779) in view of Dungl (U.S. 4,329,981) as applied to claims 1-3, 5, 8-9 and 31 above, and further in view of Tsubone et al. (U.S. 4,463,861).

Tsubone et al. teaches the use of a skin with a 2 to 160 micron thickness on a foam laminate in order to provide strength but still allow flexibility (col. 4, lines 50-65). The instant invention claims the use of a skin of 40 to 80 microns in thickness. It would have been obvious to one of ordinary skill in the art to make the skin of Lindholm as modified above in this thickness range in order to provide good strength and flexibility because of the teachings of Tsubone et al.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by

a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-6, 8-9, 20-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of Reissue application 10/066,737. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims recite a skin thickness that would have been obvious for the article of the application to have as a result of the method used to make the article claims of the '737 application as noted above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1-6, 8-9, 20-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,296,919. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims recite a skin thickness that would have been obvious for the article of the patent to have as a result of the method used to make the article claims of the '919 patent as noted above.

11. Claims 1-6, 8-9, 20-22 and 31 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,340,514 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the rubber second layer of '514 is a thick solid layer as instantly claimed.

12. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 10 of copending Application No 09/653,785. Although the conflicting

claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '785 application provides a thick skin around the foam layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-10 of copending Application No. 09/679,467. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '467 application provides a thick skin around the foam layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

14. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over claims 7 and 10 of copending Application No. 09/672,152. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '152 application provides a thick skin around the foam layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of copending Application No. 09/915,017 in view of Derr (U.S. 1,805,038). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to make the projections of the '017 application out of foam in order to provide better cushioning because of the teachings of Derr.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

16. Applicant's arguments with respect to claims 1-6, 8-9, 20-22 and 31 have been considered but are moot in view of the new ground(s) of rejection.

17. The cited references are related applications or show other mat systems.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 703-308-2420. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

WW/ww
May 18, 2003

WILLIAM P. WATKINS III
PRIMARY EXAMINER